IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1493 OF 2007

Mr. Chaitanya Jayantilal Parikh ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Mr. V.N. Bhagodia for Petitioner
Mr. A.R. Patil, Addl. P.P for State-Respondents 1,3 to 8
Mrs. Taubon F. Irani for Respondent Nos.2,9 and 10
Respondent No.11 in person

CORAM: DR. S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.
DATED: 16TH OCTOBER, 2007

ORDER (Per Smt. Roshan Dalvi,J.)

1. This Writ Petition is filed for issuance of writs of certiorari, mandamus and prohibition against Respondents 2,9,10 and 11.

2. Since the prayer in the Petition is verbose and unintelligible, we deem it proper to set it out verbatim:

> " Be pleased to issue writ of certiorari or writ of mandamus or prohibition Writ under articles 226 – 227 of constitution of India or any Writ, direction or

order in the nature of Writ directing Respondents No.3,4,5,6,7,8 to proceed further with the criminal complaints against 2,9,10 and 11 by filing FIR on several cases of Female infanticides performed by Respondent No.2,9 and 10 at their clinics and Nursing Homes namely Parijat Nursing Home, situated in Andheri West and also at Dr. Duru Shah's Clinic situated at Kwality. House, Kemps corner, Mumbai-7 mentioned in this Writ Petition and to Register Criminal cases in FIR Registers, Arrest and produce Respondents No.2 and 9 before Metropolitan Magistrate 40th Court at Giragaum and Further arrest and . Produce Respondents 2,10 and 11 before 22nd Metropolitan Magistrate Court at Andheri concerning complaints already given to them by the petitioner and make Panchanama for seizure; taking possession of muddemal which are real evidences to criminally prosecute and prove above said cases of Female infanticide and give report under section 156(3) of Criminal Procedure Code to the relevant 22nd Metropolitan Magistrate Court at Andheri and 40th Additional Chief Metropolitan Court at Girgaum."

3. Respondent No.2 is stated to be a homeopath doctor,

who illegally practices allopathy as a gynecologist. Respondents 9 and 10 are other doctors in whose clinics Respondent No.2 is stated to be carrying on her medical practice as a gynecologist. Respondent No.11 is a practicing Advocate. All of these Respondents, who are professionals, are alleged to be carrying on activities prohibited by law. The Petitioner has stated that their practice involves "female infanticide" though the averments in the Petition show description of the practice of "female foeticide" instead. Infanticides are stated to be performed by Respondent Nos.2,9 and 10 though several actions sought also against Respondent No.11.

4. The Petitioner has applied for reliefs as citizen of India entitled to protect "his" fundamental rights, which are alleged to be breached, curtailed and violated.

5. The Petitioner is the husband of Respondent No.2. This material fact has been wilfully suppressed in the Petition. There have been serious disputes and differences between the Petitioner and Respondent No.2 prior to the filing of the Writ Petition. Both the parties have filed petitions for divorce in the Family Court, Mumbai in March/April, 2007, about 4/5 months prior to the filing of this Petition. Respondent No.2 has applied for maintenance. We are told that an order

of payment of maintenance of Rs.20,000/- p.m has been passed against the Petitioner. Respondent No.2 has contended that the Petitioner failed to maintain her as also their 2 children constraining Respondent No.2 to leave the matrimonial home. We are not concerned with the various allegations and counter allegations made by both these parties with regard to their matrimony in this petition. However, the fact remains that this petition is filed in the backdrop of such relationship between the parties and is completely silent with regard to the admitted factual relationship.

6. Respondent No.2 is stated to be serving in the clinic of Respondent No.9 in the administrative office and earning Rs.13,000/- a month as she has not been maintained by the Petitioner.

7. The Respondents 2,9 and 10 have not only denied the wild allegation of female infanticide (or even female foeticide), but taken strong exception to the Petitioner defaming them as medical professionals.

8. Respondent No.11 is the Advocate of Respondent No.2 in the matrimonial proceedings. Strangely, the aforesaid 3 writs are sought even against her on allegations and

complaints of causing female infanticides !

9. It would be imperative to see how the Petitioner has made out even a prima facie case disclosing any cognizable offence under the general criminal law being the I.P.C or the special law relating to the offence of causing female foeticide being the Medical Termination of Pregnancy Act (MTP Act).

10. The Petitioner has relied upon the certificate of Diploma in Homeopathic Medicine and Surgery issued to Respondent No.2 as Exhibit-A to the Petition. This would prima facie show Respondent No.2 to be a Homeopath Doctor. The certificate shows that she passed her Final Examination in June 1988 and had been issued the certificate in October, 1996. She, therefore, cannot physically practice gynecology. Practice of gynecology would result in delivery of a child, living or still born, which is not an offence under any law. Willfully and actively terminating a pregnancy by carrying out an abortion of a female foetus without good cause may result in the offence of female foeticide (though not infanticide).

11. Respondents 9 and 10 are qualified gynecologists and would be entitled to carry on medical practice to deliver children.

12. The Petitioner has annexed a notice dated 25th February, 2007 sent to Respondent No.2 for alleged malpractices in medical practice at 6 clinics mentioned therein (including the 2 clinics of Respondent Nos.9 and 10). He called upon her to furnish a list of all her patients. He also made various allegations against her raising matrimonial disputes (with which this Petition is not concerned). In the 2 penultimate paragraphs of the said notice, the Petitioner has alleged that Respondent No.2 performed/conducted 3 female infanticides during her employment with Respondent No.10 and that she performed female infanticide for/on Advocate Respondent No.11 at the clinic of Respondent No.9 and threatened a punishment with imprisonment and heavy fine against both the Respondents 2 and 11.

13. We may mention that there is no statement of fact or an iota of evidence substantiating such insolicitous, indiscreet and bizarre allegations made by the Petitioner against his professional wife, other two qualified medical doctors and the lawyer who is his opponent in the matrimonial case.

14. The Petitioner had filed an earlier Writ Petition being Criminal Writ Petition No.731 of 2007 which failed to be entertained. The Petitioner was allowed to file a private

complaint if he chose under Order dated 17.4.2007, Exhibit-F to the Petition. He appears to have filed a private complaint on the twin grounds of the offence of performing infanticide and of theft of articles. The learned Magistrate ordered investigation under Section 156(3) of the Cr.P.C by his order dated 29th May 2007.

15. On 2nd July, 2007, the Petitioner filed another private complaint in the Court of the learned Magistrate at Andheri under Sections 114, 420 and 120B of the I.P.C against Respondent No.2 herein and all her family members on the ground of a fraud practiced upon him by them in stating that Respondent No.2 was a Homeopath Doctor, when she was not, and causing him to marry her. The Petitioner relied upon the wedding card of 1991 showing Respondent No.2 as a Doctor and the aforesaid Diploma Certificate, Exhibit-A to this Petition issued in 1996 (though Respondent No.2 passed the final Examination in 1988).

(a) The Petitioner addressed a letter dated 3rd June, 2007 to 6 hospitals and clinics calling upon them to give him the names and addresses of all patients attended by Respondent No.2, marked Exhibit-D to the Petition.

(b) On the same day he addressed a letter to the Commissioner of Police and DIG of Police (whilst he had only asked for the particulars of patients of Respondent No.2 and was yet to obtain any information thereupon) stating about "extremely serious offences" with which Respondent No.2 herein was charged being female infanticide, theft, beating, using abusive language and threatening the Petitioner with life – without any substantiating documents to make out any case under any of those sections. The Petitioner stated that Respondent No.2 herein can be "straightway" arrested; taken on remand, be charge-sheeted for female infanticide and be **"**straightway immediately criminally prosecuted**"**.

(c) The Petitioner has annexed a letter dated 7th June, 2007 addressed to the Police Commissioner and Inspectors about the "reported and registered very serious cases of 'Female Infanticide' against Respondent No.2 herein. To that letter, he annexed letter addressed to the DIG Police, Deputy DIG Police, Police Mahanirikshak, Police Mahanideshak and Mr. Rakesh Maria and called upon them to act immediately and depute lady police officers to the case. He annexed a copy of the FIR filed by him under certain

Sections of the IPC (but not under the the MTP Act).

(d) On that day itself, he addressed letters to the DIG of Police, Deputy DIG of Police, Mahanirakshak, Mahanidarshak and Mr. Rakesh Maria annexing copies of the aforesaid orders and alleged that they had not until then arrested Respondent No.2 herein, taken her on remand, recovered muddemal, or reported to the concerned Magistrate and called upon them to act immediately. He questioned why, despite the Government being serious to prosecute such offences, and he having produced and presented "real concrete cases", "quick and immediate action" was not taken.

He admitted that he was **"**constantly filing complaints**"** to D.N.Nagar & Oshiwara Police Stations as also Gamdevi Police Station.

He also alleged that one police officer be issued a memo because he had met Respondent No.2 herein and demanded transfer of his case to the **"**other better, more competent Police Officer**"**.

The only evidence produced in the said letter was his oral statement that the Respondent No.2 herein covered her face whilst coming out of a nursing home. He stated that, that was after meeting the other co-

accused.

16. The Petitioner has produced before us a copy of the Divorce Petition filed by Respondent No.2 on 9th March, 2007 claiming divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955. In the said Petition, Respondent No.2 has inter alia alleged harassment and cruelty after and upon the birth of their first child, who was a girl. One averment in the said Petition, relied upon by the Petitioner, totally out of context run thus :

> **" The Petitioner states that prior to her second pregnancy she had undergone 5 miscarriages due to the stress that the Petitioner was undergoing of having a male child as she did not want her second child to feel unwanted and ridiculed as her daughter was made to feel"**

17. The Petitioner contends that this is an extra judicial confession and calls upon the Court to issue the writs prayed for by him for prosecuting Respondent No.2 as also Respondent No.9,10 and 11 for the offence of female infanticide.

18. The complete misconstruction put by the Petitioner upon the averment in the Divorce Petition of his wife is as misconceived as his understanding of the distinction between the offences of infanticide and foeticide.

19. The Petition demonstrates total lack of any cognizable offence disclosed against any of the Respondents. It exhibits a perverse and malicious attempt of the Petitioner to make imprudent and reckless allegations against his wife, soon after her Petition for Divorce is filed and an application for maintenance and custody of her children is made.

20. The Petitioner has stooped to involve even other professionals who have contact with his wife, though only professionally. He has sought to book doctors and a lawyer in the dirty game of maligning them along with his wife. This is without any particulars of any act or omission which may constitute any offence by any of them.

21. Aside from writing letters to various authorities and brow-beating them into action, the Petitioner has not shown a single instance of the offence for which he has filed his Petition. In fact, it was argued on his behalf that the learned Magistrate has already issued order of investigation under Section 156(3) of the Cr.P.C. We fail to understand why the Petitioner required any writs of this Court thereafter. It is argued that the writs are prayed for to expedite the criminal proceedings.

22. Respondents 2,9,10 and 11 have filed their separate affidavits in reply. Only upon reading the affidavit in reply of Respondent No.2, it came to our notice that the Respondent No.2 is the wife of the Petitioner. Her affidavit also discloses various serious matrimonial disputes between the parties. There have been Divorce Petition filed by her as well as complaints lodged by her under Section 498(A) as well as under Sections 504 and 506 of the IPC. Her affidavit also discloses the reply sent by her to the Petitioner's notice dated 25th February, 2007, Exhibit-B to the Petition. The said reply is dated 1st June, 2007 well before the filing of the Petition but which has been suppressed therein.

23. The affidavits of the other Respondents show how they have been falsely implicated and defamed. The annexures to the affidavit of Respondent No.11 shows yet another letter addressed by the Petitioner to Respondent Nos.11, 2 and 10 making allegations of conducting female infanticide in collusion with one another and calling upon those Respondents to **"**meet**"** him before he proceeds with the criminal complaint which was **"**ready**"!** This has constrained Respondent No.11 to file a N.C complaint with the relevant police station along with her say showing the harassment of the Petitioner.

24. Having gone through the Petition and the annexures thereto, we are satisfied that no complaint of the Petitioner deserves to be expedited. In fact we find no cognizable offence disclosed by the Petitioner against any of the Respondents in this Petition to merit any writ being issued.

25. All that we find is a debase attempt to defame Respondents 2,9,10 and 11.

26. We, therefore, dismiss the Petition with compensatory costs fixed at Rs.10,000/- each to be paid to Respondent Nos.2,9,10 and 11 by the Petitioner, within a period of four weeks from today.

(SMT. ROSHAN DALVI, J.) **(DR. S. RADHAKRISHNAN, J.)**